

77-6375

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OGC 77-1077

17 February 1977

MEMORANDUM FOR : Admiral Turner

FROM : Anthony A. Lapham
General Counsel

SUBJECT : Authority for CIA to Provide Support for
the IC Staff

1. You have requested my advice as to the authority of the Central Intelligence Agency to provide administrative support for the IC Staff. Whether the Agency may provide such assistance without reimbursement is also of major importance.

2. There is considerable background on this subject. Further, legislative and executive actions and views are continuing to address this issue in one way or another and it seems likely that within the not too distant future, efforts will be made to resolve this and related matters by legislation.

3. The CIA, as an Agency in the Executive branch, may perform services for other agencies and departments under the authority of the Economy Act. That Act authorizes such arrangements when the head of a requesting agency determines that the acquisition of services from another agency is "in the interest of the government." Services performed pursuant to an Economy Act request are to be paid for by the requesting agency.

4. The particular wrinkle to the question goes to the matter of the legal status of the IC Staff, as well as to the legal consequences of the provisions of the 1977 Defense Appropriations Act appropriating a specific sum (\$5.6 million) for "necessary expenses for intelligence community oversight." As to the former, the National Security Act, in establishing the position of the Director of Central Intelligence and the Central Intelligence Agency, also provided for certain limited authorities and responsibilities in the Director and the Agency which extend throughout the Executive branch. But these functions do not significantly fall within the responsibility of the IC Staff and they do not involve administrative support for that Staff.

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It is my understanding that the IC Staff, as presently constituted, is a successor organization to the National Intelligence Programs Evaluation Staff (NIPE), established by Director McCone in the early 1960s. The function of NIPE was to evaluate intelligence production by intelligence community agencies, not just by CIA. It was a small office manned primarily, if not exclusively, by CIA personnel. In early 1972, Director Helms, responding to a President Nixon directive of November 1971 - a directive resulting from a study by Dr. Schlesinger, who at that time was with OMB - renamed NIPE the "Intelligence Community Staff" and expanded its functions. Director Schlesinger in 1973 brought in successive general officers to head the Staff and inserted other personnel from outside CIA. And finally President Ford's Executive Order 11905 in February 1976 created the position of Deputy to the Director for the Intelligence Community as head of the IC Staff and prescribed certain functions for the Staff. (The position of Deputy to the Director for the Intelligence Community existed prior to Executive Order 11905, but the Executive Order gave it Presidential stature.) Under all of these decisions, the IC Staff has been administered as a CIA component by CIA administrative components, including, in particular, the provision of payroll, personnel, security and related services, and the NIPE and IC Staff functions were budgeted in the CIA presentations in the annual appropriation process. No statute created or provided for the IC Staff and the Staff was not created by an Executive order, although as indicated, Executive Order 11905 acknowledged its existence by conferring authority and responsibility upon it. Thus, the IC Staff has been a component of CIA and this Office has so held on several occasions, most recently in December 1976 (copy of our OGC 76-6890 attached at Tab A). Under this body of law and administrative actions there was no question but that the administrative support of the IC Staff by CIA was authorized by law.

6. The 1977 Defense Appropriations Act, for the first time, appropriated a specific amount for "necessary expenses for intelligence community oversight." The Act was accompanied and followed by a series of documents of legislative history, including correspondence between the Director and the Appropriations Committee chairmen, which in sum would indicate Congressional intention that administrative support for the IC Staff may be furnished by CIA without reimbursement. See our advice to that effect recently addressed to the DDA, at Tab B (OGC 77-0906).

7. A special aspect of this problem concerns the availability of the CIA Legislative and General Counsels to assist and advise the Deputy to the Director for the Intelligence Community and the Intelligence Community Staff. The problem arises out of various actions accompanying the 1977 Defense Appropriations Act and, as recently as yesterday, again surfaced in connection with Mr. Knoche's and [] appearance before the House Appropriations Subcommittee with regard to a needed supplementary

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appropriation for the IC Staff. The conference report on the Defense Appropriations Act states that the IC Staff, in order to comply with the intent of Congress that the IC Staff is to be wholly independent, should not depend on other sources for "policy sensitive services." In subsequent correspondence, the House Committee indicated this restriction would preclude the IC Staff from looking to the CIA Legislative and General Counsels for assistance. This concept was not embraced by the Senate Committee, nor by Mr. Bush who, by letter of 17 January to Chairman Mahon, so advised the Chairman, based in considerable part on the unworkability of such an arrangement. A copy of Mr. Bush's letter of 17 January is at Tab C. It is apparent from the correspondence and conversations and from other indications that this issue is almost entirely a pet concern of Mr. Charles Snodgrass, a Staff Assistant on the House Appropriations Subcommittee.

8. At yesterday's session before the House Appropriations Subcommittee, whether or not the IC Staff is in compliance with the Committee's requirements with respect to its use of CIA Legislative and General Counsels became something of an issue. At that session Chairman Mahon began to read into the record a statement prepared for him which, it appeared, he had not read theretofore. When he reached the stage where the availability of Legislative and General Counsel services to the IC Staff appeared, Chairman Mahon broke off from reading his statement and indicated he would have a different statement to submit for the record. In an aside to [] the CIA Deputy Legislative Counsel who was present, Chairman Mahon said he was not enamored of the statement prepared for him. At another stage, Mr. Snodgrass, the Subcommittee staffer, challenged [] presence and asked him such questions as to what payroll he was on, who filled out his fitness reports, etc. [] answered these questions by attempting to make the points he wanted to make, rather than the points Snodgrass intended, by saying he was paid by CIA and was responsible to the Director. [] believes Chairman Mahon has become sympathetic to the position taken by Mr. Bush in his letter of 17 January, if, in fact, he was not originally disposed to that view. In this connection, Mr. Cary, the Agency Legislative Counsel, had cleared with Chairman Mahon in advance and received his approval for the appearance of [] at that session and, indeed, Mr. [] presence was a deliberate Agency decision intended to force a satisfactory resolution of this issue. It may be that this matter has not yet been put to rest, but it also appears that Mr. Snodgrass more and more is occupying an untenable and lone position.

9. As mentioned in paragraph two above, it is likely that legislation and Executive branch actions affecting the question of CIA administrative support for the IC Staff will continue in the future. It is apparent from the legislative history of the 1977 Defense Appropriations Act, and other documents, that the IC Staff is intended to be free from CIA control and dominance and the planned move downtown (by the IC Staff) is intended as a step to accomplish

that independence, as well as an effort to show independence. It is to be expected that the issue will appear again in the 1978 budget and appropriation process and it could be that, this year or in a later year, it will be decided that the IC Staff is to budget for and provide its own administrative services.

Also, a subcommittee of the Senate Select Committee on Intelligence currently is studying the desirability of new or amended statutory charters for the IC agencies, and the Agency and the Community also will be addressing these matters. Further, it is understood the question of separating the Director and at least some of his Community-wide duties and responsibilities from the Agency has been reserved by President Carter for decision at a later date. It seems likely that legislation in any of these areas might also address the matter of the legal status, authorities and administrative needs of the IC Staff.



for Anthony A. Lapham

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Attachments

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17 FEB 1977

Remarks:

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 Turner.

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FROM: Anthony A. Lapham
General Counsel

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17 FEB 1977

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OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

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Attached is a paper on the authority of the Agency to provide support for the IC Staff which Admiral Turner has requested.

Anthony A. Lapham

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